



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

in the person and his business to whom the inquiry relates, it is privileged.⁵

It is quite universal law that the giving of confidential communications to a principal by an agent employed to procure information as to the solvency, credit, and standing of another, if given in good faith, is privileged.⁶ If one merchant may thus employ his own private agent to seek and communicate such information, what legal objection can there be to a combination or union of two or more in the employment of the same agency? And, as a consequence, if an agent may act for several, he may make the pursuit of such information his occupation, and the question before the House of Lords as to whether the defendant was pursuing the business for gain would not affect the right.⁷ The question in the minds of the American court is not whether the informant may have a motive of self-gain, but rather whether or not he acts carefully and honestly. The greater number of such agencies in the United States possibly accounts for the conflict of opinion between American and English courts. It is hard to see however why the mere fact that an individual or a company realizes compensation for their information should make the communication of that information, under faithful and confidential limitations, not to the interest and welfare of society. Surely a contrary opinion can hardly be held in the light of present commercial conditions.

TRANSFER OF A RIGHT OF ACTION FROM A VENDOR OF CHATTELS TO HIS VENDEE.

In *Eshleman v. Union Stock Yard Co.*,¹ by a *per curiam* decision, the Court sustained the ruling of the lower court refusing recovery from the defendant, the owner of public stockyards, for the death of certain cattle, due to Texas fever alleged to have been contracted through negligence, in the pens of the defendant by cattle owned by the plaintiff's vendor and by them communicated to other cattle of the plaintiff which died. It was held that, even assuming that the defendant knew of the presence of "ticks" in his pens and that through negligence the disease had been contracted by the cattle there, yet no right of action for negligence could pass through the vendor to the plaintiff, the vendee.

⁵ *Sunderland v. Bradstreet*, 46 N. Y. 188; *Taylor v. Church*, 4 Seld. 452.

⁶ *Washburn v. Cook*, 3 Denio, 110.

⁷ *Ormsby v. Douglas*, 37 N. Y. 477.

¹ 222 Pa. 20 (1908).

The decision appears proper upon the facts proved and the law announced has no discovered decision against it nor any decision definitely to support the above *dicta*. If a right of action had accrued to the vendor, his mere sale of the cattle would not have transferred that right to his vendee. Such right could have passed only by sufficient assignment or descent.² It is perhaps deciding the point by an assumption in saying a right of action had accrued to the vendor and so none could accrue to his vendee.

The reasoning in the old cases of seduction,³ which appears most nearly analogous to the facts in question, should not be extended into the general law of tort. The modern tendency is to break down those barriers which prevent recovery by one who has been injured directly or consequentially, yet proximately, through the negligence or default of another. He, who was at fault, should repay the injury of another without fault, and refined reasoning should not bar.

It is now well established that where one knowingly or fraudulently sells an article imminently dangerous⁴ to human life, he is liable to any subsequent vendee or other who is injured thereby while not at fault. His liability for negligence or deliberate act to his vendee might be based on contract yet others may recover because of breach of duty to the public generally.⁵ Knowledge of such condition must generally be proven. So one who sells a folding bed knowing of its dangerous condition is liable to a third person injured;⁶ or he who knowingly sells a horse diseased with glanders is liable for the death of an attendant.⁷ So also where the contract of sale is declared simply as an inducement but the cause of action is based not upon the contract but upon the injury received by a party contemplated in the contract through the defendant's negligence, recovery is allowed.⁸ Where one labels a drink as harmless and refreshing and through negligence particles of glass are in the bottles sold, the person injured has a cause of action though knowledge be not proven.⁹

² *North v. Turner*, 9 S. & R. 244 (1823).

³ *Blaymire v. Haley*, 6 M. & W. 55 (1840); 1 Shear and Red on Neg. 116.

⁴ *Standard v. Wakefield*, 102 Va. 824 (1904); *Elkins v. McKean*, 79 Pa. 493 (1875); 1 Thompson on Negligence 817, *et seq.*

⁵ Benjamin on Sales, 431.

⁶ *Lewis v. Ferry*, 111 Cal. 39 (1896).

⁷ *Hartlove v. Fox*, 79 Md. 514 (1894).

⁸ *George v. Skivington*, L. R. 5, Exch. 1 (1869).

⁹ *Watson v. Augusta Brewing Co.*, 124 Ga. 121 (1905).

Thus it appears that though the law fastens on the vendor no general or public duty arising out of his contract, for a breach of which he can be held liable by those not in privity with him;¹⁰ yet there may be a cause of action to another based upon the breach of duty entirely aside from the terms of the contract. Thus where one railroad company negligently furnishes a defective car to a second company, the first company owes a duty of care to the employees of the second.¹¹ Whenever one person supplies goods, or machinery or the like for the purpose of their being used by another person under such circumstances that every one of ordinary sense would, if he thought, recognize at once that unless he used ordinary care and skill with regard to the condition of the thing supplied or the mode of supplying it, there will be danger of injury to the person or property of him for whose use the thing is supplied and who is to use it, a duty arises to use ordinary care and skill as to the condition or manner of supplying such thing.¹²

Under the modern economic conditions of rapid change of ownership of chattels, real or personal, the mere fact that the seeds of the resulting injury have been planted in property when owned by one person to develop into an injury when the property is owned by another, should not of itself affect or bar the right of that other to recover from the person whose negligence was the proximate cause thereof. In the principal case, the defendant was bound not only to use due care, but to possess a competent share of skill as one who undertook to perform a public business.¹³ The plaintiff was one of the regular customers, a person in contemplation. Had the negligence resulted in the cattle contracting the germs one hour later, after the sale, there would be no doubt of the plaintiff's right to recover. That the plaintiff bought immediately thereafter did not lessen the defendant's fault nor increase the plaintiff's compensation and should not affect the liability or recovery. Even if good legal reasoning could not support the cause of action, sound public policy, in such an imminently dangerous practice, as in the case of sales, should have raised a duty to the public generally and allowed recovery.¹⁴

¹⁰ *Davidson v. Nichols*, 93 Mass. 518 (1866).

¹¹ *P. R. R. v. Snyder*, 55 Ohio St. 342 (1896).

¹² *Heaven v. Pender*, L. R. 11, Q. B. D. 503 (1883).

¹³ *Spencer v. Campbell*, 9 W. & S. 32 (1845).

¹⁴ *Herrick v. Gray*, 65 Ill. 101 (1872); *Grimes v. Eddy*, 126 Mo. 168 (1894).